STATE OF MICHIGAN

COURT OF APPEALS

MARC CHAMBERS,

Plaintiff-Appellee,

v

WAYNE COUNTY AIRPORT AUTHORITY,

Defendant/Cross-Plaintiff-Appellant,

and

KNIGHT FACILITIES MANAGEMENT, INC.,

Defendant/Cross-Defendant.

UNPUBLISHED
June 5, 2008

No. 277900
Wayne Circuit Court
LC No. 05-531729-NO

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant Wayne County Airport Authority ("defendant") appeals as of right from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) (governmental immunity), (8), and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged that he fell in a puddle of water at the LC Smith Terminal of the Wayne County Airport. After his fall, Joseph Phillipson, an officer with the Wayne County Airport Authority, was flagged down by passers-by and wrote up an incident report. Among other points included in the report was a witness who stated that she observed plaintiff fall in a puddle of water and observed that there had been a cleaning crew on the site but "there was just too much water to clean up." Officer Phillipson also wrote that he personally observed several leaks from the ceiling, a cleaning crew mopping the floors, orange pylons near the larger puddles, and wet floor signs being placed as he was on the scene. Officer Phillipson stated in the report that he notified Wayne County Operations Agent James Power of both the incident and the leaking ceilings.

Plaintiff now alleges that defendant had a duty to maintain the public building and prevent and protect against dangerous conditions. Defendant moved for summary disposition and argued, in part, that plaintiff failed to provide notice of the occurrence within 120 days as

required by MCL 691.1406. The trial court found that the incident report was sufficient to satisfy the requirements of MCL 691.1406, and on that basis it denied defendant's motion. We review de novo the trial court's denial of summary disposition. *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007).

MCL 691.1406 states, in pertinent part:

> As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.
>
> The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. . . .

The gravamen of defendant's motion for summary disposition was that the first communication it received from plaintiff regarding the incident was the commencement of the instant lawsuit approximately sixteen months after the incident – well after the 120-day notice period. Our Supreme Court has construed a failure to satisfy the substantially identical notice requirement in MCL 691.1404(1) as a strict bar to suit irrespective of whether the governmental agency suffers any actual prejudice as a result. *Rowland*, *supra* at 219-223. In addition to being substantively identical, both provisions are part of the governmental tort liability act, MCL 691.1401 *et seq*, and they should therefore be interpreted identically. *Empire Mining Partnership v Orhanen*, 455 Mich 410, 426 n 16; 565 NW2d 844 (1997).

However, it has nevertheless long been the case in Michigan that "notice," particularly where demanded of an average citizen for the benefit of a governmental entity, need only be understandable and sufficient to bring to the defendant's attention the important facts. *Brown v City of Owosso*, 126 Mich 91, 94-95; 85 NW 256 (1901). The notice itself, therefore, should be liberally construed in favor of "the inexpert layman with a valid claim" who "should not be penalized for some technical defect." *Meredith v City of Melvindale*, 381 Mich 572, 579; 165 NW2d 7 (1969). What constitutes "a notice" is not, in fact, defined in the governmental tort liability act. MCL 24.205(4), MCL 462.107(3), and MCL 565.802(i) define the term in various ways that do not seem relevant except insofar as they are consistent with the dictionary definitions, all of which pertain to *bringing knowledge to the attention of another*. Thus, plaintiff contends that the incident report – taken by defendant's employee and indicating on its face that the pertinent facts were reported upward in defendant's chain of management – constitutes sufficient and timely notice.[1] The trial court agreed, and, given the context above, so do we.

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[1] Defendant also argues that the incident report only documents the existence of an *incident*, not
(continued…)

Defendant also contends that plaintiff has not established that it had actual or constructive notice of the conditions that allegedly caused plaintiff's fall. Defendant concedes that a skycap[2] who worked in the area of the fall testified that the ceiling frequently leaked in that area, and had leaked since she started working there half a year previously. Defendant asserts that the skycap was unable to pinpoint any specific leaks other than one, in a different place. However, she testified that water leaked from ten or more places in the ceiling, as "if you turned on a shower," and she further testified that the area where plaintiff fell had been the location of one of the leaks. In fact, her testimony was that there were pay telephones there at the time – consistent with the location described in Officer Phillipson's report – that were essentially unusable because of the water leaking over them. She further testified that there had been several complaints made by passengers about the water. We find that the skycap's testimony sufficient to create a genuine question of material fact whether defendant had actual or constructive notice of the defective condition of the premises.

Defendant finally contends that plaintiff has no proof other than his own deposition testimony and the skycap's deposition testimony that he was actually injured because of the water leaking from the roof. Furthermore, defendant contends that neither deponent could provide evidence that plaintiff more likely fell because of a ceiling leak than, for example, water tracked onto the floor from the shoes of other airline passengers. However, even if we were to agree, the question is whether, at a summary disposition stage of the proceedings, there is a genuine issue of material fact for a trial, not whether plaintiff has already satisfied his *ultimate* burden of proving by a preponderance of the evidence that his fall was caused by the defective conditions. We note, however, that nothing in the evidence suggests that the water came from any source other than the numerous ceiling leaks that *were* described as being the source for, at a minimum, a considerable amount of water on the floor. We disagree with defendant's contention that the jury would need to speculate that the water came from the ceiling leaks, because the evidence seems to suggest the opposite: the jury would need to speculate that the water came from somewhere *other* than the ceiling leaks.

We hold that: the incident report taken by defendant's employee satisfies the statutory notice requirement, there is at least a genuine question of material fact whether defendant had the statutorily required actual or constructive notice of the alleged defective conditions, and there is at least a genuine question of material fact whether plaintiff's injuries were actually caused by the alleged defective conditions. The trial court therefore properly denied defendant's motion for summary disposition.

Affirmed.

/s/ Alton T. Davis
/s/ Jane M. Beckering

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an impending *claim*. The statute, however, explicitly specifies that the notice must be of the location and nature of the defect, the injury sustained, and any witnesses – all of which are indeed found in the incident report.

[2] A porter employed by an airport to assist passengers with luggage, wheelchairs, and so on.